



## CONFIDENTIALITY AGREEMENT

This Agreement ("Agreement") is made and entered into by and between \_\_\_\_\_ ("Owner") and \_\_\_\_\_ ("Potential Buyer") and shall be effective as of \_\_\_\_\_.

WHEREAS, Owner owns certain real property commonly known as \_\_\_\_\_ ("Property"), and

WHEREAS, Potential Buyer is considering acquiring the Property from Owner, and

WHEREAS, in order to evaluate whether or not to acquire the Property Potential Buyer wants Owner to provide Potential Buyer with certain information and/or documents,

NOW THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged Owner and Potential Buyer agree as follows:

1. **Agreement to Provide Information.** Owner agrees to make available to Potential Buyer certain information and documents which Owner has in its possession concerning the Property. As a condition to furnishing such information and documents to Potential Buyer and its "Representatives" (as defined below), Potential Buyer agrees to treat such information in accordance with the provisions of this Agreement. As used herein the term "Representatives" shall mean with respect to any person or entity, collectively all of such person's or entity's officers, directors, employees, affiliates, partners, members, representatives, agents, brokers or advisors, including, without limitation, attorneys, accountants, consultants, bankers and financial advisors.

2. **Definition of Evaluation Material.** The term "Evaluation Material" means all information and documentation concerning the Property which Owner and/or its representatives provides to Potential Buyer or to its Representatives and all notes, analyses, compilations, studies, interpretations or other documents prepared by Potential Buyer or its Representatives that contain, reflect or are based upon, in whole or in part, the information furnished to Potential Buyer or its Representatives pursuant hereto; provided, however, that the foregoing shall not require Potential Buyer to reveal or disclose to Owner in any manner any such notes, analyses, compilations, studies, interpretations or other documents prepared by Potential Buyer or its Representatives. The term Evaluation Material shall not include information which is generally available to the public.

3. **Use of Evaluation Material and Confidentiality.**

(a) Potential Buyer hereby agrees that it and its Representatives shall use the Evaluation Material solely for the purpose of evaluating whether to acquire the Property, that the Evaluation Material shall be kept confidential and that Potential Buyer and its Representatives shall not disclose any of the Evaluation Material in any manner whatsoever and, that such information shall be disclosed only to such of Potential Buyer's Representatives who need to know such information for the sole purpose of evaluating the purchase of the Property and who are informed that such information is confidential. In any event, Potential Buyer shall be responsible for any disclosure by any of its Representatives of any Evaluation Materials which if made by Potential Buyer would be a breach of this Agreement, and Potential Buyer agrees, at its sole expense, to take all reasonable measures to prevent or restrain its Representatives from prohibited or unauthorized disclosure or use of the Evaluation Material. In no event shall Potential Buyer or its Representatives use the Evaluation Material except in connection with the subject purchase, and any other use of the Evaluation Material is strictly prohibited.

(b) Potential Buyer agrees that, without the prior written consent of Owner, it and its Representatives (i) shall not disclose to any other person the fact that the Evaluation Material has been made available to Potential Buyer, the fact that discussions or negotiations are taking place concerning a possible sale of the Property or any of the terms, conditions or other matters then being discussed with respect thereto (including the status thereof), and (ii) shall not contact any of Owner's or the Property's tenants, partners, members, employees, contractors, managers, insurers, managing agents, adjoining property owners or lenders concerning the Property.

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(c) If Potential Buyer decides that it does not wish to proceed with the purchase, it shall promptly inform Owner of that decision. In that case, or at any time upon the request of Owner for any reason, Potential Buyer and shall promptly deliver to Owner all Evaluation Material (and all copies thereof) furnished to it or its Representatives by or on behalf of Owner pursuant hereto. At such time Potential Buyer shall also destroy or deliver to Owner all Evaluation Material prepared by Potential Buyer or its Representatives and no copy thereof shall be retained. Notwithstanding the return or destruction of the Evaluation Material, Potential Buyer and its Representatives shall continue to be bound by Potential Buyer's obligations of confidentiality and other obligations hereunder.

4. **Accuracy of Evaluation Material.** Potential Buyer understands and acknowledges that Owner, its Representatives and/or the Brokers (both those representing Seller and those representing Potential Buyer) are not making any representation or warranty, express or implied, as to the accuracy or completeness of the Evaluation Material. Potential Buyer agrees that Owner, its Representatives and/or the Brokers shall not have any liability to Potential Buyer or to any of its Representatives relating to or resulting from the use of the Evaluation Material or any errors therein or omissions therefrom. Only those representations or warranties which are made in a final definitive agreement regarding the purchase, as, when and if executed and delivered shall have any legal effect.

5. **Remedies.** It is understood and agreed that money damages would not be a sufficient remedy for any breach of this Agreement by Potential Buyer or any of its Representatives and that Owner shall be entitled to equitable relief, including injunctions and specific performance, as a remedy for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach by Potential Buyer or any of its Representatives of this Agreement but shall be in addition to all other remedies available at law or equity to Owner.

6. **Miscellaneous.**

(a) **Waivers and Amendments.** No failure or delay by Owner in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege hereunder. This Agreement may be amended only with the written consent of Owner and Potential Buyer.

(b) **Effect of Agreement.** Neither Potential Buyer nor Owner nor any of their respective affiliates is under any legal obligation of any kind whatsoever with respect to conducting negotiations relating to or consummating the purchase of the Property by virtue of this Agreement. Owner reserves the right, in its sole discretion, to reject any and all proposals made by Potential Buyer with regard to purchasing the Property and to engage in discussions and negotiations, and to enter into a definitive agreement, with regard to any other transaction, with any other person at any time and without notice to Potential Buyer and to terminate discussions and negotiations with Potential Buyer at any time.

(c) **Governing Law.** The parties hereby agree that this Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located. The parties hereby irrevocably consent to the exclusive jurisdiction of the state courts located in the State in which the Property is located for any actions, suits or proceedings arising out of or relating to this Agreement.

(d) **Severability.** If any provision of this Agreement is found to violate any statute, regulation, rule, order or decree of any governmental authority, court, agency or exchange, such invalidity shall not be deemed to affect any other provision hereof or the validity of the remainder of this Agreement, and such invalid provision shall be deemed deleted herefrom to the minimum extent necessary to cure such violation.

(e) **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but together shall constitute one agreement. Telecopied and PDF signatures may be used in place of original signatures on this Agreement, and the parties intend to be bound by the signatures on such telecopied document or PDF copies. Signatures to this Agreement accomplished by means of electronic signature or similar technology shall be legal and binding.

(f) **Entire and Sole Agreement.** This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous oral or written communications with respect hereto, all of which are merged herein.

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WHEREFORE, by their signature below, the parties hereto acknowledge that they have reviewed carefully the terms of this Agreement and they understand it is a legally binding Agreement.

**POTENTIAL BUYER:**

**OWNER:**

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\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

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